



[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 1

[Docket No.: FAA-2012-0019; Amdt. No. 1-67]

RIN 2120– AK03

### Removal of Category IIIa, IIIb, and IIIc Definitions

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** The FAA is removing the definitions of Category IIIa, IIIb, and IIIc operations.

The definitions are outdated because they are no longer used for aircraft certification or operational authorization. Removing the definitions will aid in international harmonization efforts, future landing minima reductions, and airspace system capacity improvements due to the implementation of performance based operations.

**DATES:** Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Submit comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the FAA will publish a timely withdrawal in the Federal Register.

**ADDRESSES:** You may send comments identified by docket number FAA-2012-0019 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

*Privacy*: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

*Docket*: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Bryant Welch, Flight Technologies and Procedures Division, Flight Operations Branch, AFS-410, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024; telephone (202) 385-4539; e-mail [bryant.welch@faa.gov](mailto:bryant.welch@faa.gov).

For legal questions concerning this action, contact Nancy Sanchez, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; e-mail [nancy.sanchez@faa.gov](mailto:nancy.sanchez@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Authority for this Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 40103, which vests the Administrator with broad authority to prescribe regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

### **The Direct Final Rule Procedure**

The FAA is adopting this direct final rule without prior notice and prior public comment because this rule is not controversial, is not expected to result in the receipt of an adverse comment, and a notice of proposed rulemaking (NPRM) is not necessary. The Category IIIa, IIIb, and IIIc operations definitions are outdated, unnecessary, and overly restrictive. The FAA does not believe we will receive an adverse comment because this rule will not affect any existing operator's aircraft certification or operational approval. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134) provide that to the

maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and an NPRM may be published with a new comment period.

See the “Additional Information” section for information on how to comment on this direct final rule and how the FAA will handle comments received. In addition, there is information on obtaining copies of rulemaking documents.

## **I. Overview of Final Rule**

The FAA is removing the definitions of Category IIIa, IIIb, and IIIc operations. Category III aircraft operations are precision approach and landing operations using an Instrument Landing System (ILS) conducted in very low visibility conditions. Currently, any approach and landing with a runway visual range (RVR) below 1000 feet is considered a

Category III operation.<sup>1</sup> The Category IIIa, IIIb, and IIIc operations definitions divide the general regime of Category III operations into specific RVR (visibility) bands. The definitions are outdated because they are no longer used for aircraft certification or operational authorization. Removing the Category IIIa, IIIb, and IIIc operations definitions will have no effect on existing Category III operators. The general Category III operation definition remains in effect, and is fully described in FAA orders and advisory circulars.

## **II. Discussion of the Direct Final Rule**

### History

The International Civil Aviation Organization (ICAO) established the general concepts and definition of Category III operations in 1966 in ICAO Annex 10, *Aeronautical Communications* and then added the definitions of Category IIIa, IIIb, and IIIc operations in 1967. These did not correspond exactly with current definitions, but the required RVR values are the same. The FAA issued the initial U.S. CAT IIIa criteria (Advisory Circular (AC) 120-28, Criteria for Approval of Category III Weather Minima for Takeoff, Landing, and Rollout) on September 5, 1969, to assist industry in developing a CAT IIIa (minimum RVR 700 feet) approach capability. These criteria included the basic concepts and minimum airborne equipment design requirements necessary for Category III operations, including the Fail Operational and Fail Passive control system concepts.<sup>2</sup> The first U.S. aircraft certification for CAT IIIa occurred in 1971. This approval was based on the use of Fail Operational automatic landing systems.

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<sup>1</sup> Category III operational approvals and instrument procedures are described in terms of RVR. RVR is an instrumentally derived value, given in feet, that reflects seeing conditions on a runway, and is dependent on the use of high intensity runway lighting.

<sup>2</sup> Fail Operational means an airborne system with redundant operational capability down to touchdown and, if applicable, through rollout. Fail Passive means an automatic flight control system, which, upon occurrence of any

In December 1971, the FAA revised the CAT IIIa criteria (AC 120-28A) by establishing initial operational approval criteria. These criteria were based on a conservative approach for reducing operating minima. However, as industry gained operational experience, the FAA determined that the AC 120-28A criteria were unnecessarily stringent. In December 1976, the U.S. certificated the first airplane for Fail Passive CAT IIIa operations. This and following certifications were based on the use of Fail Operational or Fail Passive flight control systems, but some Aircraft Flight Manuals specified that the aircraft were suitable for Category IIIa operations.

As operational experience and the capabilities of airborne equipment increased in CAT IIIa operations, the FAA and industry realized the need for CAT IIIb (RVR lower than 700 feet but no lower than 150 feet) criteria. The FAA issued the initial U.S. CAT IIIb criteria for RVR 600 operations in March 1984 (AC 120-28C). Aircraft certifications and operational approvals continued to be based on the capabilities of the aircraft's Fail Operational or Fail Passive flight control systems, but also continued to tie the certifications and approvals to the Category IIIa and IIIb definitions. CAT IIIc operations are conducted with RVR below 150 feet. The FAA has not developed the criteria for aircraft certification and operational approval for Category IIIc operations. Therefore, Category IIIc operations have not been authorized.

The FAA codified the definitions of Category IIIa, IIIb, and IIIc operations in 1996. ICAO adopted the same definitions in ICAO Annex 6, *Operation of Aircraft*, in 1998. These definitions described the operational concepts in use at that time, and reflected existing technological capabilities and operational requirements. The definitions were used in certification and authorization documents. However, advances in aircraft technology and

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single failure, should not cause: significant displacement from the approach path, altitude loss, or significant out of

changes in the framework of operational approval have rendered the definitions obsolete for those purposes. While still used for discussion and as a shorthand way to describe different levels of category III operations, the Category IIIa, IIIb, and IIIc definitions are no longer used as a basis for aircraft certification or for issuance of operational authorizations.

#### Domestic Practice

While AC 120-28D, issued in October 1999, references the definitions of Category IIIa, IIIb, and IIIc operations, the aircraft certification and operational approval documentation no longer uses these definitions. Under AC 120-28D, aircraft certifications are based solely on the demonstrated capabilities of the aircraft to land and rollout on the runway. For example, an aircraft with Fail Operational systems may be demonstrated to automatically land and rollout at RVR 150 feet, and this capability is stated in the Aircraft Flight Manual. The operational approvals will be based on that Manual without reference to the Category IIIa, IIIb, and IIIc definitions.

#### International Practice

An effort is underway to rationalize and standardize Category III approach minima internationally. Aircraft certification standards are essentially the same worldwide with regard to the use of Fail Operational or Fail Passive system criteria to describe landing capabilities. Operational approval criteria are also based on the aircraft system capabilities, as in the United States. However, the publication of Category III landing minima for use on the approach are still tied to the Category IIIa, IIIb, and IIIc definitions, both internationally and in the United States. The FAA is removing the CAT IIIa, IIIb, and IIIc definitions as a first step toward the universal description of Category III operations and certification in terms currently used. The FAA

presented a Working Paper to the ICAO Operations Council in October, 2011 requesting the deletion of the Category IIIa, IIIb, and IIIc definitions from the ICAO Annexes. The FAA also presented a similar paper to the European Aviation Safety Agency (EASA)/ FAA All Weather Operations Harmonization Working Group in October, 2011.

### Landing minima

Category III approach charts depicting landing minima in terms of the Category IIIa, IIIb, and IIIc definitions are now unnecessary. The Category III landing minima at a particular runway are based on the demonstrated qualities and capabilities of the ILS installed on that runway. The FAA tests every installed ILS in accordance with ICAO criteria, and the results are classified and published to define the allowable landing minima. These ILS classifications are used directly in the determination of landing minima.

Once this rule is effective, the FAA will amend FAA Orders defining publication of Category III minima by removing references to Category IIIa, IIIb, and IIIc operations. The amended Orders will directly relate the ILS system classification to the allowable published minima. The approach charts will show only the lowest possible Category III landing minima on a runway. For example, the approach chart for a landing at an airport would only state that the RVR is 600 and will not make any reference to the CAT IIIb operations definition. Operators will use the published minima in conjunction with their Operations Specifications to determine the lowest landing minima allowed to them, as is currently done.

### Impact on Future Operations

Future Category III operations may derive from new low visibility approach and landing technologies. The type of operations, landing minima and aircraft certification criteria for these future systems will not follow the Category IIIa, IIIb, and IIIc definitions. Thus, removing the



Category IIIa, IIIb, and IIIc definitions will eliminate the need for future systems to comply with these outdated definitions.

### **III. Regulatory Notices and Analyses**

#### **A. Regulatory Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to

that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule.

The FAA is removing the definitions of Category IIIa, IIIb, and IIIc operations. Since this final rule removes outdated and unnecessary definitions, the expected outcome will be a minimal impact with positive net benefits, and a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if any agency determines that a rule is not expected to have a significant economic impact on a

substantial number of entities, section 605(b) of RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, the changes to § 1.1 are cost relieving because the FAA is removing the definitions of Category IIIa, IIIb, and IIIc operations. The definitions are outdated and no longer used for aircraft certification or operational authorization. Therefore, as the FAA Acting Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it is neither considered an unnecessary obstacle nor a promotion to international trade and therefore it will have no impact on international trade.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a

proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this direct final rule.

#### F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following difference. Once this rule is effective, the FAA's regulations will no longer include the definitions of Category IIIa, IIIb, and IIIc operations. This differs from ICAO Standards and Recommended Practices because ICAO's Annex 6 and Annex 10 include the Category IIIa, IIIb, and IIIc definitions. Until such time ICAO removes these definitions from its annexes, the FAA will be required to file a Difference with ICAO.

#### G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

#### **IV. Executive Order Determinations**

##### **A. Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

##### **B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use**

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **V. Additional Information**

##### **A. Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the rulemaking

action in this document. The most helpful comments reference a specific portion of the rulemaking action, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this rulemaking action, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this rulemaking action in light of the comments it receives.

#### B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

#### **List of Subjects in 14 CFR Part 1**

Air transportation.

#### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

#### **PART 1 -- DEFINITIONS AND ABBREVIATIONS**

1. The authority citation for part 1 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

2. Amend §1.1 by removing the definitions of “Category IIIa operations”, “Category IIIb operations”, and “Category IIIc operations”.

Issued in Washington, DC, on February 7, 2012.

Michael P. Huerta  
Acting Administrator

[FR Doc. 2012-3692 Filed 02/15/2012 at 8:45 am; Publication Date: 02/16/2012]